

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 7. DEPARTMENT OF ENVIRONMENTAL QUALITY REMEDIAL ACTION

PREAMBLE

1. Sections Affected
R18-7-401
R18-7-401
- Rulemaking Action
Repeal
New Section
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing legislation: A.R.S. §§ 49-104(A)(17), 49-104(B)(17), and 49-104(C), and Laws 1997, Chapter 296
Implementing legislation: Laws 1997, Chapter 296 (portions of which are codified as A.R.S. §§ 49-153 through 49-157)
3. The effective date of the rules:
October 21, 1998.
4. A list of all previous notices appearing in the Register addressing the final rule:
Notice of Rulemaking Docket Opening: 3 A.A.R. 1937, July 18, 1997.
Notice of Proposed Rulemaking: 3 A.A.R. 1912, July 18, 1997.
Notice of Exempt Rulemaking: 3 A.A.R. 2403, August 29, 1997.
Notice of Rulemaking Docket Opening: 3 A.A.R. 2410, August 29, 1997.
Notice of Proposed Rulemaking: 3 A.A.R. 2886, October 17, 1997.
5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: George Tsiolis or Martha Seaman
Address: Department of Environmental Quality
3033 North Central Avenue
Phoenix, AZ 85012
Telephone: (602) 207-2222
Fax: (602) 207-2251
6. An explanation of the rule, including the agency's reasons for initiating the rule:

The Notice of Proposed Rulemaking for this rule was published in the *Arizona Administrative Register* on October 17, 1997.

The purpose of this rulemaking is to implement Laws 1997, Chapter 296, which requires the Department to establish a fee to support the processing and reviewing of submittals pertaining to remedial actions performed under the Greenfields Pilot Program. The fee rule in this rulemaking will replace the expedited interim fee rule on the same subject which was published in the *Arizona Administrative Register* on August 29, 1997.

A. Background for This Permanent Fee Rule

In recent years, the Arizona legislature has made efforts to encourage the redevelopment of underutilized properties including properties located in urban or industrialized areas (so-called "brownfields" sites). These efforts include the authorization of risk-based soil remediation standards using non-residential exposure assumptions (Laws 1995, Chapter 232), the qualified exemption of lenders and fiduciaries from liability for WQARF and LUST sites (Laws 1996, Chapter 177), and the authorization of the Department to enter into qualified agreements with prospective purchasers of brownfields sites which provide the purchaser with a written release, covenant not to sue and immunity from contribution claims for any potential liability for existing contamination (Laws 1996, Chapter 177).

Laws 1997, Chapter 296 establishes the Greenfields Pilot Program, which is intended to encourage the voluntary remediation of up to 100 soil-contaminated brownfields sites. The pilot program provides this encouragement by removing direct departmental involvement in the voluntary remediation in favor of a delegated approach with limited departmental oversight. Under the pro-

Arizona Administrative Register
Notices of Final Rulemaking

gram, a remediation specialist certified by the Arizona Board of Technical Registration performs the remediation, ensures that applicable remedial action criteria are met, and certifies that no further remediation work is necessary at the site through the submittal to the Department of a "no further action" letter. The Department, in turn, supervises the program by verifying the specialist is eligible for participation in the program, by ascertaining that the site is eligible for remediation under the program, and by auditing a percentage of the Greenfield's sites to determine whether the remediations are consistent with applicable remedial action criteria.

Laws 1997, Chapter 296 requires the Department to finance its involvement in the Greenfields program through the collection of a fee. Pursuant to § 11 of that law, the Department filed an expedited interim fee rule on August 6, 1997. The expedited interim fee rule, which became effective upon the date of its filing, was published in the *Arizona Administrative Register* on August 29, 1997 and will remain in effect until the permanent fee rule that is the subject of this notice becomes effective.

B. Specific Explanation of This Permanent Rule

Laws 1997, Chapter 296, § 10(A) establishes a Greenfields program fund that is to be financed through legislative appropriations and from the fee that is the subject of this permanent rule making. Section 10(B) identifies the legislative appropriations as being \$170,000 from the general fund into the Greenfields fund through fiscal year 1999. Section 10(E) requires the fee to be sufficient to finance the cost of implementing and administering the Greenfields Pilot Program. Based on the language of these provisions, the Department has determined that the initial \$170,000 are for start-up development of the Greenfields program, but that the fee must cover the cost of implementing the program site-by-site.

Development of the program will include formulating procedures for ensuring the specialists and sites are eligible for participation in the Greenfields program, and for selecting remedial actions for auditing by the Department based upon the type of site and the level of contamination. Development also includes devising standard certification forms, reporting forms, and notification forms to be used during a Greenfields remediation. Finally, development includes the rulemaking necessary to implement the Greenfields program.

Implementing the program site-by-site consists largely of departmental reaction to actions taken by the property owner and certified remediation specialist. At least 15 days prior to the performance of the voluntary remediation, the property owner and remediation specialist must submit an application to the Department which shows that the specialist is properly certified by the Board of Technical Registration and has adequate financial assurance based on the proposed scope of work. The application must also certify that the site in question has soil contamination that has not impacted groundwater and is 1 of the first 100 Greenfields sites. The property owner or specialist also must notify the public of the proposed remediation, and submit a copy of the notice to the Department. The Department must process and review these submittals. If the Department determines that the specialist is qualified to perform the remediation and that the site is eligible for remediation under the Greenfields program, then the Department must notify the property owner or specialist not less than 15 days after receiving the copy of the public notice that the specialist may begin the remediation. The Department must also identify which state environmental permits or approvals the property owner is not required to obtain during the performance of the remediation.

Following the performance of the remediation, the specialist must submit a "no further action" letter to the Department, a copy of the remediation report, and corresponding laboratory data packages. The Department must process and review this submittal. The specialist also must submit the Greenfields fee at this time, which the Department must process into the Greenfields program fund. Based on its review of the submittals, the Department must determine whether to conduct an audit of the remediation, and if necessary must perform the audit within 180 days. The audit may include field inspection and soil sampling. The purpose of the audit is to determine whether the remediation was consistent with applicable remedial action criteria, as well as gather information generally to determine the efficacy of the pilot program. Based on the results of the audit, the Department may have to record a notice of revocation of the specialist's "no further action" letter and, if so, notify the Board of Technical Registration of the deficiencies in the remediation.

The Department has determined the fee for participating in the Greenfields Pilot Program will be \$2,200 per site. This fee is near the lower end of the range of fees charged by other states for participation in programs similar to the Greenfields program. The Department's assumptions behind the calculation of this fee and the reason for selecting 1 flat fee are presented in the summary of economic, small business, and consumer impacts, below.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The summary of the economic, small business, and consumer impact:

Summary

Laws 1997, Chapter 296 requires the Department to finance its involvement in the Greenfields Pilot Program through the collection of a fee. The Department's involvement in the program consists of reviewing and processing Greenfields submittals and performing an audit on a portion of the Greenfields sites. The Department has determined that the cost of these activities is \$2,200 per site. The Department shall recover this cost by charging an equivalent fee of \$2,200 per Greenfields site, because charging 1 flat fee that spreads the cost of the site audits among all the sites will provide predictability which is necessary to encourage voluntary remediations of soil-contaminated brownfields sites. The alternative, which involves recovering the costs of performing a site audit only from those sites actually being audited, up to 6 months after the specialist's submission of the "no further action" letter, would result in an unplanned-for additional, significant financial burden on those persons who are audited.

Notices of Final Rulemaking

The financial unpredictability in such an approach could discourage persons and small businesses in particular from performing a voluntary remediation under the Greenfields program.

The economic impact of this final rulemaking is positive. The benefits of the program's facilitation through the charging of the fee outweigh the cost of the fee, because the program provides an avenue to redevelopment and economic revitalization of a property that is expected to be faster and less costly than already-existing routes to remediation which involve more extensive departmental oversight and review.

a. Identification of persons who will be directly affected by, bear the costs of or directly benefit from the rule making

1. Owners of the brownfields site -- These persons include individuals, private businesses, municipalities, and other political subdivisions of the State who desire to remediate a brownfields soil-contaminated site using a certified remediation specialist under the Greenfields Pilot Program. These persons will benefit from the rule making, because it provides an avenue toward obtaining a "no further action" letter that is potentially faster, involves less departmental oversight, and therefore involves less departmental review cost as compared to performing the remediation under A.R.S. §§ 49-282.05(B) or 49-285(B).

2. State agencies that are involved in the implementation of the program -- The Department will assign staff to react to actions taken and submittals received from the certified remediation specialist, as described in Section 6 above. The Office of Administrative Hearings and the Attorney General's Office may be involved in challenges to actions taken by the Department pursuant to the Greenfields program, such as a challenge to the Department's revocation of a "no further action" letter based on a site audit.

3. Responsible parties as defined under A.R.S. § 49-283 -- These parties are persons who are responsible for the existing soil contamination at the brownfields site that is being remediated under the Greenfields Pilot Program. The extent of these persons' liability will be determined in part based on the remediation costs incurred by the property owner.

4. Newspapers of general circulation in the county where the brownfields site being remediated under the Greenfields Pilot Program is located -- These entities will benefit from the requirement that the remediation specialist publish a notice of the planned remediation in their newspapers.

5. General public -- Members of the general public will receive a substantial benefit from this rule making's facilitation of the redevelopment of soil-contaminated brownfields sites that are currently vacant, abandoned, or otherwise not realizing their full economic potential. Members of the public residing or working in the area of such sites will particularly benefit from the economic revitalization of the sites, from economic and quality-of-life standpoints. Taxpayers will benefit because facilitating private remediations under the Greenfields program will diminish the taxpayers' burden associated with public-financed remediations.

b. Cost-benefit analysis

This cost-benefit analysis necessarily examines the costs and benefits of the program being financed by the fee that is the subject of this rule making, in addition to the costs and benefits of the fee itself.

1. Implementing agency -- The costs to the Department, the implementing agency, will be the costs of reacting and responding to submittals from the property owner and certified remediation specialist, the performance of audits on a portion of the sites remediated under the Greenfields program, and interaction with the Bureau of Technical Registration. The costs for implementing the Greenfields program are estimated as follows:

TABLE 1 - ESTIMATED TOTAL COSTS TO IMPLEMENT THE PROGRAM

| | <u>Cost per Site</u> | <u>Extension</u> |
|--|--|------------------|
| 100 Sites - Review and Processing | \$ 509 (see Table 2) | \$50,900 |
| 15 Audits by ADEQ, no Samples | \$2,461 (see Table 3) | \$36,915 |
| 10 Audits w/Contractor CRS, no Samples | \$3,363 (see Table 3) | \$33,360 |
| 10 Audits by ADEQ, w/Samples | \$6,552 (see Table 4) | \$65,520 |
| 5 Audits w/Contractor CRS, w/Samples | \$8,356 (see Table 4) | <u>\$41,780</u> |
| | ESTIMATED TOTAL | \$228,745 |
| | ESTIMATED TOTAL AVERAGED PER SITE | \$ 2,200 |

CRS = certified remediation specialist

TABLE 2 - ESTIMATED COST TO REVIEW AND PROCESS SUBMITTALS PER SITE

(NOT INCLUDING A SITE AUDIT)

| <u>Staff</u> | <u>Rate</u> | <u>Hours</u> | <u>Extension</u> |
|-----------------|-------------|--------------|------------------|
| Section Manager | \$59 | 0.25 | \$15 |
| Unit Manager | \$54 | 1.0 | \$54 |

Arizona Administrative Register

Notices of Final Rulemaking

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|------------------|------|------------|--------------|
| Project Manager | \$45 | 8.0 | \$360 |
| Clerk Typist III | \$20 | <u>4.0</u> | <u>\$ 80</u> |
| ESTIMATED TOTALS | | 13.25 | \$509 |

Hourly Rates are based on 66% utilization for manager/technical personnel and 72% for clerical as Laws 1997, Chapter 296 requires implementation of the program to be self-financed.

TABLE 3 - ESTIMATED COST TO PERFORM A FIELD AUDIT

WITHOUT FIELD VERIFICATION (SAMPLES)

| <u>Staff</u> | <u>Rate</u> | <u>Hours</u> | <u>Extension</u> |
|-------------------------------|-------------|--------------|------------------|
| Section Manager | \$59 | 1.5 | \$ 89 |
| Unit Manager | \$54 | 6.0 | \$ 324 |
| Hydrologist IV(CRS) | \$56 | 8.0 | \$ 448 |
| Hydrologist III | \$50 | 8.0 | \$ 400 |
| Project Manager | \$45 | 24.0 | \$ 1,080 |
| Clerk Typist III | \$20 | <u>6.0</u> | <u>\$ 120</u> |
| ESTIMATED TOTALS | | 53.5 | \$2,461 |
| (Substituting Contractor CRS) | | (57.5) | (\$3,363) |

CRS = certified remediation specialist

Hourly Rates are based on 66% utilization for manager/technical personnel and 72% for clerical as Laws 1997, Chapter 296 requires implementation of the program to be self-financed.

TABLE 4 - ESTIMATED COST TO PERFORM A FIELD AUDIT

WITH FIELD VERIFICATION (SAMPLES)

| <u>Staff</u> | <u>Rate</u> | <u>Hours</u> | <u>Extension</u> |
|--|-------------|--------------|------------------|
| Section Manager | \$59 | 2.0 | \$ 118 |
| Unit Manager | \$54 | 8.0 | \$ 432 |
| Hydrologist IV(CRS) | \$56 | 16.0 | \$ 896 |
| Hydrologist III | \$50 | 24.0 | \$1,200 |
| Project Manager | \$45 | 32.0 | \$1,440 |
| Clerk Typist III | \$20 | <u>8.0</u> | <u>\$ 160</u> |
| ESTIMATED LABOR TOTALS | | 90.0 | \$4,246 |
| Analytical: 4 samples for metals, PCBs, VOCs | | | \$2,180 |
| Travel & Per Diem | | | <u>\$ 126</u> |
| ESTIMATED TOTAL | | | \$6,552 |
| (Substituting Contractor CRS) | | (98.0) | \$8,356 |

CRS = certified remediation specialist

Hourly Rates are based on 66% utilization for manager/technical personnel and 72% for clerical as Laws 1997, Chapter 296 requires implementation of the program to be self-financed.

The Department has elected to recover the estimated per-site cost of \$2,200 through an equivalent flat review fee of \$2,200 for each Greenfields site remediation. The one-flat-fee approach was selected over approaches that involve site-specific billing based on unit rates, because those approaches do not provide the predictability that is necessary to encourage voluntary remediations of soil-contaminated brownfields sites.

For instance, the Department examined the possibility of charging a flat fee for the administrative work associated with reviewing an initial Greenfields submittal to determine the eligibility of the site and the specialist, reviewing the public notice of

Arizona Administrative Register
Notices of Final Rulemaking

planned remediation, notifying the specialist that it may begin the remediation, identifying which other approvals or permits the property owner will not be required to obtain, and reviewing and processing the "no further action" letter and supportive documentation; and charging only those sites audited for the actual costs of the audit using unit rates for staff-time, sampling equipment, and laboratory analyses. Using this approach to financing the program would have meant charging a flat fee to all participating property owners, and then, up to 6 months later surprising some of the owners with a notice that the Department has decided to audit their site and will be requiring the owner to pay an additional \$3,000 or more for an audit without field verification, or an additional \$7,000 or more for an audit with field verification. Such an approach is not only unpredictable, in that it would result in an unplanned-for additional, significant financial burden on the property owner, but also may give rise to the appearance of unfairness to the owner of the site selected for the audit. The property owner likely would challenge the audit based on a feeling of unfair surprise and a desire to avoid the additional cost. In general, any approach that does not inform the property owner of its liability to the Department up-front may discourage smaller businesses from performing a voluntary remediation under the Greenfields program. For these reasons, the Department shall charge an up-front, predictable, flat review fee of \$2,200 which spreads the projected cost of audits over all of the property owners participating in the Greenfields program.

There are no incremental benefits to the Department as a result of this rule. Fees to be paid by the certified remediation specialist or its employer are merely to reimburse the Department for the above costs; no profit margins are contemplated.

2. Other agencies directly affected by the rulemaking -- An administrative appeal by the participating property owner concerning an action taken by the Department pursuant to the Greenfields program, including a decision to perform an audit or revoke a "no further action" letter, could result in costs to the Office of Administrative Hearings for convening the formal adjudication on the procedural or substantive validity of the appeal, and costs to the Attorney General's Office for representing the Department in the matter. These costs would, as usual, be covered by the respective budgets of those offices. These costs do not result from the charging of the fee itself.

There are no incremental benefits to the Office of Administrative Hearings and the Attorney General's Office as a result of this rule.

3. Political subdivision of this state directly affected by the rulemaking -- If a political subdivision of this state desires to perform a remediation under this program, then its costs and benefits deriving from this rulemaking will be those costs and benefits discussed for private persons who are directly affected by the rule making, below.

4. Businesses directly affected by the rulemaking -- If a business desires to perform a remediation under this program, then its costs and benefits deriving from this rulemaking will be those costs and benefits discussed for private persons who are directly affected by the rule making, below.

Newspapers will not be impacted by this rule; rather, newspapers will be impacted by the requirement in Laws 1997, Chapter 296 to publish the notice of planned remediation in the county where the brownfields site in question is located. There are no costs to these newspapers resulting from this rule making. Newspapers will derive the benefit from charging a fee for publishing the notice.

5. Private persons and consumers who are directly affected by the rulemaking -- The cost to persons who are directly affected by the fee will be the cost of the fee itself. This fee should be outweighed by the benefit of being able to elect to perform a voluntary remediation through the use of a certified remediation specialist with minimal departmental oversight and less departmental review cost as compared to performing the remediation under A.R.S. §§ 49-282.05(B) or 49-285(B).

Consumers probably will not be directly affected by the charging of the fee. Consumers may be indirectly affected, as businesses performing a Greenfields remediation likely will pass the cost of the remediation, including the cost of the fee, onto persons consuming the business' products and utilizing the business' services. The indirect benefit to consumers, which is a cleaner environment and improved quality of life, will outweigh the disbursed impact felt as a result of the fee.

c. Probable impact on private and public employment

1. Businesses directly affected by the rulemaking -- There is little impact on private employment at businesses directly affected by the rule making. Presumably, a business would have to divert \$2,200 of its revenues to finance its involvement in the Greenfields program; however, a business would already have made the decision to expend substantial amounts of money, which might otherwise be used to compensate its employees, in the remediation of a brownfields site, so that the additional cost of the Greenfields fee would be relatively minimal.

2. Agencies directly affected by the -- There is no impact on public employment in the agencies affected by this rule making. As previously indicated, the Department is required to finance its involvement through the collection of the fee; therefore, there are no additional costs to the Department that would divert revenues used to compensate its employees. Any impact of the Greenfields program on the Office of Administrative Hearings or the Attorney General's Office, discussed above, is the result of Laws 1997, Chapter 296, and not the fee used to finance implementation of the program established by that law.

3. Political subdivisions directly affected by the rulemaking -- There is little impact on political subdivisions directly affected by the rule making. Presumably, a political subdivision that desires to perform a remediation under the Greenfields program would have to divert \$2,200 of its revenues to finance its involvement in the Greenfields program; however, an entity would already have made the decision to expend substantial amounts of money, which might otherwise be used to compensate its employees, in the remediation of a brownfields site, so that the additional cost of the Greenfields fee would be relatively minimal.

d. Probable impact on small businesses and reduction of impact:

1. Identification of small businesses subject to the rulemaking -- Small businesses subject to the fee would be those that elect to undertake a voluntary remediation under the Greenfields program. Having made the decision to engage in a possibly costly voluntary remediation, it is likely that a small business will benefit from the rule making, because the rulemaking enables the business to perform the remediation through the use of a certified specialist with minimal departmental oversight and with less review cost as compared to performing the remediation under A.R.S. §§ 49-282.05(B) or 49-285(B).

2. Administrative and other costs required for compliance with the rulemaking --The only costs required for compliance with this fee rule is the paying of the fee which is necessary to finance the sought-after program.

3. Description of methods the agency may use to reduce the impact on small businesses (A.R.S. § 41-1035 analysis) - Laws 1997, Chapter 296 requires the Department to recoup all of its costs of implementing the Greenfields Pilot Program through the collection of the fee. The Department, therefore, does not have the discretion to exempt small business who wish to participate in the program from having to pay a fee. In order to lessen the impact to small business, however, the Department has elected to charge 1 flat fee for every Greenfields site, which spreads the cost of performing audits on a portion of those sites over all of the sites. This approach, as indicated above, will eliminate the possibility of an unexpected additional, significant financial burden on small businesses whose sites have been selected for an audit.

e. Statement of the probable effect on state revenues

There may be a positive effect on the general fund, as any money received through collection of the fee that is not utilized in the implementation of the Greenfields program must be returned to the general fund on an annual basis.

f. Description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking

The purpose of the rulemaking is to finance the implementation of the Greenfields Pilot Program through the collection of a reasonable fee, as required under Laws 1997, Chapter 296. For reasons discussed above, the Department believes that the least costly alternative of achieving this purpose is to average the cost of implementing the program, including performing the required audits on a percentage of the sites, over all of the sites that may be remediated under the program. This approach will eliminate the possibility of an unexpected additional, significant financial burden on persons whose sites are selected for an audit.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

The only change between the proposed rules and these final rules is the reference to the codified portions of Laws 1997, Chapter 296, which are now at A.R.S. §§ 49-153 through 49-157.

10. A summary of the principal comments and the agency response to them:

No comments.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

12. Incorporations by reference and their location in the rules:

None.

13. Was the rule previously adopted as an emergency rule?

No. The rule was previously adopted as an expedited interim rule, in accordance with Laws 1997, Chapter 296, Section 11, at: 3 A.A.R. 2403, August 29, 1997.

14. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 7. DEPARTMENT OF ENVIRONMENTAL QUALITY
REMEDIAL ACTION**

ARTICLE 4. VOLUNTARY REMEDIATION PROGRAM

Section

R18-7-401. Greenfields Pilot Program Fee

R18-7-401. Greenfields Pilot Program Fee

ARTICLE 4. VOLUNTARY REMEDIATION PROGRAM

R18-7-401. Greenfields Pilot Program Fee

A. A certified remediation specialist who participates in the Greenfields Pilot Program pursuant to Laws 1997, Chapter 296, and who submits the documentation that states that no further action is required to remediate the known releases on

the site shall remit the review fee required under subsection B together with the documentation.

B. The Department shall charge a flat fee of \$2,200 per accepted site participating in the Greenfields Pilot Program.

R18-7-401. Greenfields Pilot Program Fee

A. A certified remediation specialist who participates in the Greenfields Pilot Program pursuant to A.R.S. §§ 49-153 through 49-157 and who submits the documentation that states that no further action is required to remediate the known releases on the site shall remit the review fee required under subsection B together with the documentation.

B. The Department shall charge a flat fee of \$2,200 per accepted site participating in the Greenfields Pilot Program.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 12. DEPARTMENT OF ENVIRONMENTAL QUALITY UNDERGROUND STORAGE TANKS

PREAMBLE

1. **Sections Affected:**
R18-12-705
R18-12-706
R18-12-707
R18-12-710
R18-12-712
R18-12-714
- Rulemaking Action:**
Amend
Amend
Amend
Amend
Amend
Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 49-104(B)(4)
Implementing statute: A.R.S. §§ 49-1015, 49-1071, 49-1072
3. **The effective date of the rules:**
October 21, 1998
4. **A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 3 A.A.R. 3368, November 28, 1997.
Notice of Proposed Rulemaking: 4 A.A.R. 999, May 1, 1998.
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: George Tsiolis or Martha Seaman
Address: Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012
Telephone: (602) 207-2222
Fax: (602) 207-2251
TDD: (602) 207-4829
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**
 - A. **Agency's Reasons for Initiating the Rule**

Pursuant to A.R.S. § 49-1072 and R18-12-702, the Department may grant money from the Underground Storage Tank (UST) grant account to UST owners or operators to cover costs of (1) UST retrofitting or replacement to meet UST upgrade requirements, (2) permanent UST closure, (3) replacement of a non-complying UST with a sound UST of equal or smaller volume, (4) necessary and reasonable UST corrective action work not covered under the UST State Assurance Fund (SAF), (5) demolition work absolutely necessary to perform the eligible UST project, and (6) expedited departmental review of work plans, reports, and other documents designated under A.R.S. § 49-1072(A)(4).

The purpose of this final rulemaking is to clarify that (i) UST owners or operators may submit a grant application to the Department before or after commencement or completion of the work that is the subject of the application; (ii) proof of a contract performance bond, contractor's insurance policy, mechanic's lien, and contract, if required under the rules, may be submitted before or after commencement or completion of the work; (iii) failure to provide proof of a contract performance bond, contractor's insurance policy, mechanic's lien, and contract, if required under the rules, will result in forfeiture of the grant issue; (iv) if a contract performance bond is required under the rules, then it must follow American Institute of Architects surety bond form A311 covering 2 years from the date on which final payment under the contract falls due; (v) proof of a contract performance bond is not required for a SAF-related grant application; (vi) proof of contractor's insurance policy need not include coverage for pollution liability if the application is for a SAF-related grant; (vii) proof of 3 bids is not required for a SAF-related grant application; (viii) a work timetable is not necessary for work that is already completed; and (ix) 25 priority ranking points shall be allocated to a local government whose fund balance is negative.
 - B. **Section-by-Section Explanation of The Final Rules**
 1. **R18-12-705. Grant Application Process - Subsection A**

R18-12-705 provides an overview of the UST grant application process but does not make clear the consequences of failing to contract with a properly insured and bonded service provider to perform the work. It is not until R18-12-714(D), at the very end

Arizona Administrative Register
Notices of Final Rulemaking

of the rules, that the consequences of such failure are made clear. The final rules repeat the warning at R18-12-714(D) up-front at R18-12-705(A). If R18-12-707 requires the applicant to contract with a properly insured service provider under a contract performance bond, and to provide proof of the contractor's insurance, performance bond, mechanic's lien, and contract, then the applicant must do so not later than 60 days after receiving the Department's notice of grant issue, otherwise the grant issue shall be forfeited.

2. R18-12-705. Grant Application Process - Subsection B

The final rulemaking renumbers R18-12-712(1)(a) as R18-12-712(B)(1). Accordingly, final R18-12-705(B) which refers to that rule reflects the renumbering.

3. R18-12-705. Grant Application Process - Subsection F

A.R.S. §§ 49-1071 and 49-1072 and R18-12-705 do not make clear whether the Department may consider a grant application submitted after commencement or completion of the work that is the subject of the application. However, at the time the legislature enacted A.R.S. § 49-1072(A)(2) which allows grants to cover the cost of corrective actions not covered by the SAF, the Department made most of its SAF payment determinations under reimbursement *after* completion of the work. Therefore, the legislature must have anticipated that calculations of the grant amount necessary to cover the cost *not* reimbursed by the SAF also would be made after completion of the work. It follows that applications for SAF-related grants may be submitted before or after commencement or completion of the corrective action work.

Arguably, the legislature did not intend to treat grant applications for the other types of eligible work differently, otherwise it would have clarified the difference in the law. Accordingly, grant applications and application resubmissions regarding UST retrofitting or replacement to meet UST upgrade standards, permanent UST closure, replacement of a non-complying UST with a sound UST of equal or smaller volume, demolition work absolutely necessary to perform the eligible project, or expedited departmental review of documents designated under A.R.S. § 49-1072(A)(4) also may be submitted before or after commencement or completion of the work.

Final R18-12-705(F) makes these clarifications.

4. R18-12-706. Grant Application Contents - Subsections B and C

R18-12-706(B) describes background information required in a grant application. The current version of R18-12-706(B)(5) states the application shall contain "[t]he UST owner identification number assigned by the Department to the person who owns the facility where the eligible project *will be* conducted." This rule language may convey the impression that a grant application may not be submitted once the work has commenced. Such an impression would be inconsistent with the legislature's intent, discussed above, that grant applications may be submitted before or after commencement or completion of the work. Final R18-12-706(B)(5) resolves the inconsistency.

R18-12-706(C) describes additional background information required in a grant application. The current version of subsection C states the "application shall contain all of the following information regarding the facility at and UST on which the eligible project *will be* conducted" (emphasis added). This rule language also may convey the impression that a grant application may not be submitted once the work has commenced. Again, such an impression would be inconsistent with the legislature's intent, discussed above, that grant applications may be submitted before or after commencement or completion of the work. Final R18-12-706(C) resolves the inconsistency.

5. R18-12-706. Grant Application Contents - Subsection D

R18-12-706(D) describes the substantive components of a grant application. The current version of R18-12-706(D) indicates that grant applications must include proof of 3 contractor bids for the work that is the subject of the application unless the application is for an expedited review of documents designated under A.R.S. § 49-1072(A)(4). The purpose of this bid requirement is to enable the Department to verify that the cost of the work which will determine the grant amount is in line with industry standards and is not unreasonable. However, if the grant application is to cover the costs of necessary and reasonable corrective action work not covered under the SAF program, the SAF program will determine whether the costs are necessary and reasonable. Accordingly, an application for a SAF-related grant does not need to include the proof of 3 bids. Final R18-12-706(D)(2), (3), (4) and (6) effects this clarification.

The current version of R18-12-706(D)(7) describes the substantive components of a grant application for expedited review of documents designated under A.R.S. § 49-1072(A)(4). Final R18-12-706(D)(7) removes a misimpression that subsections (E) through (I) apply only to applications for expedited review. Additionally, final R18-12-706(D)(7) clarifies that the application must identify the documents that are the subject of the request for expedited review. Finally, final R18-12-706(D)(7) makes clearer that the Department shall measure such requests against a schedule of review costs for each type of document.

6. R18-12-707. Work Plan - Subsection A(2), (4), (5)

R18-12-707(A) describes the required contents of a work plan that accompanies a grant application for installation of leak detection, spill and overfill prevention or corrosion protection systems, or for replacement of a non-complying UST with a UST of equal or smaller volume. The language at subsections (A)(2), (A)(4), and (A)(5) currently states that the work plan must contain a plan "that includes specific actions *to be taken*," specifications "for all equipment *to be installed*," and, where corrosion protection is involved, supporting documents demonstrating the effectiveness of the system "where it *will be operating*" (emphasis added). This rule language may convey the impression that a grant application must be submitted before the work has

Notices of Final Rulemaking

commenced. Such an impression would be inconsistent with the legislature's intent, discussed above, that grant applications may be submitted before or after commencement or completion of the work. Final R18-12-707(A)(2), (A)(4), and (A)(5) resolves the inconsistency.

Additionally, final R18-12-707(A)(5) revises the current version to clarify that an engineering plan is necessary only for the installation of a cathodic protection system.

7. R18-12-707. Work Plan - Subsection A(3)

R18-12-707(A)(3) currently states that the work plan that accompanies a grant application for installation of leak detection, spill and overfill prevention or corrosion protection systems, or for replacement of a non-complying UST with a UST of equal or smaller volume must contain a "timetable for the incremental steps and completion of the project." The unqualified requirement of a timetable may convey the impression that a grant application must be submitted before the work has commenced. Such an impression would be inconsistent with the legislature's intent, discussed above, that grant applications may be submitted before or after commencement or completion of the work. Final R18-12-707(A)(3) resolves the inconsistency.

8. R18-12-707. Work Plan - Subsection A(6)

R18-12-707(A)(6) currently states that the work plan that accompanies a grant application for installation of leak detection, spill and overfill prevention or corrosion protection systems, or for replacement of a non-complying UST with a UST of equal or smaller volume must include proof of a performance bond for completion of the contract. Final R18-12-707(A)(6) qualifies that the proof of contract performance bond must be an original or duplicate of an American Institute of Architects bond form number A311. Form A311 specifies that any suit under the bond may be filed up to 2 years following the date on which final payment under the contract falls due. Form A311 is readily available through most surety companies, and its 2-year requirement is an industry standard which should be codified in the rules to promote consistency and avoid confusion.

9. R18-12-707. Work Plan - Subsection B

R18-12-707(B) describes the required contents of a work plan that accompanies a grant application for necessary and reasonable corrective action costs not covered by the SAF. Under the current language, the work plan must include the information required at R18-12-607.01 for obtaining pre-approval under the SAF program, as well as proof of contract performance bond, mechanic's lien, contract, and contractor's general liability insurance including coverage for pollution liability.

Final R18-12-707(B) eliminates the requirement of information required specifically under R18-12-607.01, in reliance on final R18-12-706(D)(6). Final R18-12-706(D)(6) requires the SAF-related grant applicant to submit copies of applicable SAF direct payment or reimbursement determinations already issued by the Department. In situations where the SAF program has not yet made a direct payment or reimbursement determination, the SAF-related grant applicant would have to submit a written statement that the applicant has applied for a SAF preapproval, direct payment, or reimbursement determination. The grant program would then commit monies to cover the copayment or deductible amount stated in the SAF application on file with the Department, which would remain committed (subject to the requirements at R18-12-714(D)) pending receipt of the direct payment or reimbursement determination required under final R18-12-714(B)(2). Under final R18-12-714(B)(2), the Department shall not pay the committed SAF-related grant monies until it receives the actual copy of the SAF direct payment or reimbursement determination in addition to the invoices for that work.

Additionally, final R18-12-707(B) eliminates the requirement that an SAF-related grant applicant submit proof of a contract performance bond. Such proof is not essential because 1 purpose of a bond, which is assurance that the corrective action will be performed, will already have been largely satisfied by the applicant's satisfaction of the eligibility requirements for participation in the SAF program. Those eligibility requirements include providing proof of financial responsibility as specified in 40 CFR 280 subpart H which provides the assurance that the corrective action will be performed. Moreover, requiring a contract performance bond on a corrective action for which the SAF program is paying 90% of costs is counterintuitive as a contract performance bond is not a condition of SAF coverage.

Finally, final R18-12-707(B) eliminates for SAF-related applicants the requirement that the contractor's general liability insurance policy must include coverage for pollution liability, because most if not all insurers will not provide coverage for pollution liability at a known LUST site. (This type of insurance is not the same as insurance obtained in satisfaction of the financial responsibility requirements. The insurance obtained by the UST owner or operator in satisfaction of the financial responsibility requirements merely insures against damages resulting from UST leaks and assures that the necessary corrective action will be done. The contractor's insurance required under the grant program goes 1 step further, by insuring also against damages that may result from the actual work performed by the contractor.)

10. R18-12-710. Feasibility Determination - Subsection A

R18-12-710(A) specifies that the Department's review of a grant request to upgrade or replace a UST for corrosion protection shall determine the feasibility of an upgrade before it commits the grant funds to the project. The current version of the rule requires the Department to base its feasibility determination on a report of an internal UST inspection of the existing UST conducted in accordance with American Petroleum Institute publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", (December 1987, Supplement March 6, 1989). The reference is incorrect, as publication 1632 is not applicable to the conduct of such an inspection. The final version of the rule replaces this reference with the correct reference, 1631, "Interior Lining of Underground Storage Tanks," 2nd edition (December, 1987), which does apply to such an inspection. Additionally, the final version of the rule deletes the requirement that the contractor certify the feasibility determina-

Arizona Administrative Register
Notices of Final Rulemaking

tion was made in accordance with publication 1631, as it is the Department and not the contractor that must make the feasibility determination.

11. R18-12-712. Criteria for Determining Priority Ranking Points for Applicants That Are Local Governments

R18-12-712 specifies how the Department shall rank approved grant applications for priority of payment. However, the current rule language fails to indicate how many points the Department shall allocate to a local government applicant whose fund balance is negative. Final R18-12-712 specifies that 25 points shall be allocated in such instances (compare with current R18-12-711(B)(3)(a)). Additionally, final R18-12-712 rennumbers the subsections to make their designations consistent with the alphanumeric designations in the rest of the grant rules.

12. R18-12-714. Grant Issuance: Notification: Payment - Subsection A

R18-12-714(A) currently specifies the Department shall notify a grant applicant of its determination whether to approve or deny a grant issuance within 90 days of the end of a grant application submission period. Final R18-12-714(A) clarifies that the 90 days may be measured also from the end of a grant application resubmission period, consistent with R18-12-705(E) and R18-12-709(B) which allow an applicant to correct deficiencies in the grant application by resubmitting the application within 30 days of receiving a written statement of deficiencies from the Department.

13. R18-12-714. Grant Issuance: Notification: Payment - Subsection B(1), (2), (3)

R18-12-714(B)(1) currently specifies the Department shall not make a grant payment until it receives proof of the documents required under R18-12-707(A)(6) through (9). Final R18-12-714(B)(1) removes the pointer and clarifies that the Department shall not make a grant payment until it receives the proof of contract performance bond, contractor's insurance, mechanic's lien, and contract *if required* under R18-12-707 relating to any of the grant-eligible projects. Additionally, final R18-12-714(B)(1) clarifies that the grant applicant may submit such information before or after commencement or completion of the work, as long as the applicant submits the information not later than 60 days after receiving the Department's notice of grant issue, consistent with R18-12-705(A) and R18-12-714(D).

R18-12-714(B)(2) currently specifies that the Department shall not make a grant payment until it receives the *original* invoices for work performed or equipment installed in conjunction with the eligible project, and that each cost item in the invoice shall refer to a specific task in the work plan. Final R18-12-714(B)(2) allows originals or copies of the invoices to be submitted, and clarifies that the cost items in each invoice shall refer to a task in the work plan only if the work involves installation of a leak detection system, addition of spill and overfill prevention or corrosion protection, replacement of the UST with a complying UST of equal or smaller volume, or removal of the UST from the ground for the purposes of closure. However, cross-referencing invoice items to tasks in a work plan would not be required if the work involves only corrective action; instead, the applicant would have to submit a copy of the SAF program's final direct payment or reimbursement determinations for the work that is the subject of the grant application in addition to the invoices, as the Department makes SAF-related grant payments only to applicants who have a SAF direct payment or reimbursement determination in hand. (An application for expedited review of documents designated under A.R.S. § 49-1072(A)(4) does not require a work plan, and therefore would not involve cross-referencing invoice items to a work plan.)

R18-12-714(B)(3) currently specifies the Department shall not make a grant payment until it receives a written statement from the applicant that certifies that the work has been performed in accordance with a work plan approved by the Department. Final R18-12-714(B)(3) qualifies that SAF-related grant applicants do not need to submit such a statement, because the assurance provided by certification is already provided by the SAF direct payment or reimbursement determination. Final R18-12-714(B)(3) also removes the requirement that the statement from other types of grant applicants reference a Department-approved work plan, because grant applications for expedited review of documents designated under A.R.S. § 49-1072(A)(4) do not require a work plan.

14. R18-12-714. Grant Issuance: Notification: Payment - Subsection C

R18-12-714(C) currently states the Department "shall not make total payments in excess of the amount in the written detailed, firm, fixed cost estimates approved by the Department" (emphasis added). This statement implies that cost bids are required for program approval for all types of grant applications. This requirement would be inconsistent with final R18-12-706(D), which specifies that cost bids are not necessary if the application is for a corrective action or an expedited review of documents designated under A.R.S. § 49-1072(A)(4). Final R18-12-714(C) removes this inconsistency.

Additionally, final R18-12-714(C) clarifies that the Department shall make total payments up to the approved amount unless the amount actually spent on the eligible project is less than the approved amount, in which case the Department shall make total payments up to the amount actually spent. Finally, final R18-12-714(C) reiterates the requirement that the Department shall not make any payments for work that is not a grant-eligible project unless it is directly related to the preparation of the grant application.

15. R18-12-714. Grant Issuance: Notification: Payment - Subsection D

R18-12-714(D) currently states that an applicant who fails "to meet the requirements of subsection (B)(1) within 60 days of the notice of grant issue" shall forfeit the grant issue. Final R18-12-714(D) states more precisely that the 60-day clock starts upon the applicant's receipt of the Department's notice of grant issue.

Notices of Final Rulemaking

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

8. **The summary of the economic, small business, and consumer impact:**

An economic, small business and consumer impact statement is not required for this rulemaking in accordance with A.R.S. § 41-1055(D)(3) because the rulemaking is deregulatory. The final rules reduce burdens on grant applicants by eliminating unnecessary or redundant application procedures grant applicants must follow. The final rules reduce burdens on the Department's grant program by enabling the Department to avoid review of unnecessary or redundant grant application components. Cost savings accrue to both applicants and the Department in the form of reduced cycle times for grant applications. Although the final rules clarify certain practices and procedures, they do not assign additional responsibilities or costs to grant applicants and do not result in increased responsibilities or costs to the Department. The overall economic impact of this rulemaking is positive.

Under the final grant rules, UST owners or operators who were not able to submit a grant application to the Department before commencement or completion of the work are now expressly allowed to submit the application after commencement or completion of the work. UST owners or operators who were not able to submit proof of a contract performance bond, contractor's insurance policy, mechanic's lien and contract, if required under the rules, before commencement or completion of the work are now expressly allowed to submit the information after commencement or completion of the work. UST owners and operators who are submitting a SAF-related grant application are no longer required to submit proof of a contract performance bond, contractor's insurance coverage for pollution liability, and 3 bids because the need for this information is obviated by prior compliance with the SAF program.

Additionally, the final rules clarify already existing rules and practice. First, the revised rules reiterate a statement made at the end of the rules at R18-12-714(D) up front near the beginning of the rules at R18-12-705(A) for greater clarity, that failure to provide proof of a contract performance bond, contractor's insurance policy, mechanic's lien and contract, if required under the rules, will result in forfeiture of the grant issue. This is not a new requirement because it repeats an already-existing requirement at R18-12-714(D).

Second, the final rules clarify that a contract performance bond, if required under the rules, should follow American Institute of Architects surety bond form A311 covering 2 years from the date on which final payment under the contract falls due. Form A311 is already employed by surety companies and its 2-year requirement is an industry standard already adhered to by grant applicants and the grant program.

Third, the final rules clarify that 25 priority ranking points shall be allocated to a local government whose fund balance is negative. This scoring allocation is inferred from the existing rule at R18-12-711(B)(3)(a) governing the scoring of applicants other than local governments and is already employed by local government applicants and the grant program.

9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

There are no changes between the proposed rules and these final rules.

10. **A summary of the principal comments and the agency response to them:**

The Department received 1 written comment, from Tierra Dynamic, Inc., a professional environmental engineering firm that services UST grant applicants. Tierra Dynamic fully supports these revised rules and requests that they become effective as quickly as possible. Tierra Dynamic considers the rulemaking to be deregulatory in nature and necessary to sustain the smaller businesses that typically apply for UST grants. The Department agrees with this written comment.

During the oral proceedings on the rulemaking, the Department did not receive any formal oral comments. However, informal comments were all supportive of the rulemaking.

11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable.

12. **Incorporations by reference and their location in the rules:**

This rulemaking makes the following change to the incorporations by reference:

American Petroleum Institute publication 1631, "Interior Lining of Underground Storage Tanks," 2nd edition, December, 1987. Located at R18-12-710(A). This incorporation by reference replaces the incorporation by reference to American Petroleum Institute publication 1632.

13. **Was the rule previously adopted as an emergency rule?**

No.

14. **The full text of the rules follows:**

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 12. DEPARTMENT OF ENVIRONMENTAL QUALITY
UNDERGROUND STORAGE TANKS**

**ARTICLE 7. UNDERGROUND STORAGE TANK GRANT
PROGRAM**

Section
R18-12-705. Grant Application Process

- R18-12-706. Grant Application Contents
- R18-12-707. Work Plan
- R18-12-710. Feasibility Determination
- R18-12-712. Criteria for Determining Priority Ranking Points for Applicants That Are Local Governments
- R18-12-714. Grant Issuance; Notification; Payment

ARTICLE 7. UNDERGROUND STORAGE TANK GRANT PROGRAM

R18-12-705. Grant Application Process

- A. In accordance with the provisions of R18-12-706(A), an owner or operator shall submit to the Department during a grant application submission period described in R18-12-704 all of the information described under in R18-12-706, except that the work plan required by R18-12-706(D)(2) does not need to include the information required by R18-12-707(A)(6) through (9) until the Department has notified the applicant, in accordance with R18-12-714(A), whether a grant has been approved or denied surety bond, general liability insurance, mechanic's lien, and contract, if required under R18-12-706(D)(2), may be submitted separately from the work plan. If the owner or operator elects to submit separately the proof of surety bond, general liability insurance, mechanic's lien, or contract, then the owner or operator shall submit that information to the Department not later than 60 days after receiving the Department's notice of grant issue approval under R18-12-714(A), measured from the date of the certified mail return receipt, otherwise the grant issue shall be forfeited in accordance with R18-12-714(D). The Department shall not issue a warrant for the payment of the grant if the Department has not received all information required under this Article.
- B. After the close of the submission period, the Department shall review grant applications in the order received and allocate priority ranking points to each application in accordance with R18-12-711 or R18-12-712. If no priority points are allocated under R18-12-711(B)(3)(a) or R18-12-712(1)(a)(B)(1), the Department shall inform the applicant in writing that the application has been rejected.
- C. If an application is not rejected, the Department shall review the application and determine whether there are deficiencies in the information submitted. The Department shall inform the applicant in writing of any deficiencies and of the resubmission provisions under R18-12-709(B).
- D. If a grant application involves either upgrading a UST system with corrosion protection under R18-12-702(A)(2) or replacing a UST system under R18-12-702(A)(3), the Department shall determine the feasibility of upgrading the system in accordance with the requirements of R18-12-710.
- E. Following the end of the resubmission period, the Department shall determine which applicants are to receive grant funds in accordance with R18-12-713 and make payments in accordance with R18-12-714.
- F. The Department shall accept for consideration grant applications and grant application resubmissions that are submitted before or after commencement or completion of the work that is the subject of the grant application or application resubmission.

R18-12-706. Grant Application Contents

- A. An owner or operator seeking a grant to fund an eligible project as described in R18-12-702 shall submit to the Department an application on a form provided by the Department. The application may contain information on more than 1 project at the facility if all requirements under this Article

are met for each project. If the same information is required for more than 1 project on the same application, the information shall be included only once and a reference made on the application to that information.

- B. The application shall contain all of the following information:
 1. The name, daytime telephone number, and mailing address of the applicant;
 2. The federal employer identification (tax) number or social security number of the applicant;
 3. A description of the applicant's status as either an owner or operator and classification as either a local government or other than local government;
 4. The total number of UST facilities owned or operated by the applicant;
 5. The UST owner identification number assigned by the Department to the person who owns the facility where the eligible project was or will be conducted;
 6. The name and daytime telephone number of a person the Department may contact if there are questions regarding the application or its attachments.
- C. The application shall contain all of the following information regarding the facility at and UST on which the eligible project was or will be conducted:
 1. The facility name, site address, and the associated County Assessor book, map, and parcel number;
 2. The UST facility identification number assigned by the Department;
 3. The date of installation of the UST;
 4. The regulated substance stored in the UST over the past 12 months;
 5. The Leaking Underground Storage Tank number assigned by the Department to any releases at the facility;
 6. A statement as to whether the facility is involved in marketing regulated substances from UST systems;
 7. The distance, in miles, from the facility to the nearest alternative source of the same regulated substance as stored in the UST system;
 8. If the eligible project is described under R18-12-702(A)(1) through (3), a business plan prepared in accordance with R18-12-708.
- D. An application, except an application for a corrective action grant as described in R18-12-702(A)(4) or an application for expedited review as described in R18-12-702(A)(6), shall contain the information required by subsections (D)(1) through (5), (2), (3), (4), (5) and (7) (8) for the eligible project. An application for a corrective action grant as described in R18-12-702(A)(4) shall contain the information required by subsections (D)(1), (2), (3), (5), (6) and (8). An application for an expedited review as described in R18-12-702(A)(6) shall contain the information required by ~~subsection (D)(6)~~ subsections (D)(1), (3), (5) and (7).
 1. A statement of the kind of eligible project as listed in R18-12-702(A).
 2. A work plan which meets the requirements of R18-12-707. The work plan shall be the basis for all cost bids submitted with the application.
 3. The total amount of grant funds requested. The amount requested shall be the lowest of 3 written, detailed, firm, fixed-cost bids for completing the eligible project. All 3 cost bids shall be for projects that will use the same methodology to achieve compliance with the regulatory requirements for the project. If the amount requested is based on 3 cost bids that are required under (D)(4), then

Arizona Administrative Register
Notices of Final Rulemaking

- the amount requested shall be the lowest of the cost bids.
4. The 3 bids, which shall include, for each itemized cost, a description of the kind of work, equipment, or materials and any labor, transportation, or other activities that constitute the itemized cost. Each itemized cost shall refer to the specific item contained in the work plan that will be completed for that itemized cost.
 4. Three written, detailed, firm, fixed cost bids for completing the eligible project. All 3 cost bids shall be for projects that will use the same methodology to achieve compliance with the regulatory requirements for the project and shall include for each itemized cost a description of the kind of work, equipment, or materials and any labor, transportation, or other activities that constitute the itemized cost. Each itemized cost shall refer to the specific item or portion of the work plan that describes that cost.
 5. The total amount of costs incurred for professional services directly related to the preparation of the grant application.
 6. If the eligible project is a corrective action as described in R18-12-702(A)(4), then the grant applicant shall also include a copy of the direct payment or reimbursement determinations for that corrective action issued by the Department in accordance with R18-12-609, otherwise the applicant shall include a statement that the information identified at R18-12-601 through R18-12-607.01 was submitted to the Department as required for the Department to make the SAF preapproval, direct payment, or reimbursement determinations.
 7. If the eligible project is an expedited review as described in R18-12-702(A)(6), the application shall contain the information required by subsections (B), (C), and (E) through (I) and subsections (D)(1), (D)(3), and (D)(5) identify the documents the applicant is requesting be reviewed on an expedited basis. The A schedule of costs for an expedited review of documents shall be used to determine the grant amount of the grant request. The schedule of costs shall include each type of document and the corresponding cost for the expedited review of that document shall be shown for each document included in the project.
 78. The name and address of each service provider, including subcontractors, that performed, or will perform, services required to conduct the eligible project, and all of the following information for each service provider:
 - a. Identification as a consultant, contractor, engineer, subcontractor, tester, or other professional classification and whether a license from the Board of Technical Registrations is required for the profession;
 - b. Contractor license number issued by the Registrar of Contractors;
 - c. License number issued by the Board of Technical Registrations;
 - d. The name and daytime telephone number of the project contact person.
 - E. An applicant applying on behalf of an individual, or a firm classified as other than local government, shall submit to the Department the information described in subsections (E)(1) through (3) and, if applicable, (E)(4).
 1. For all applicants, the balance sheet from the most recent completed fiscal year for the firm, and all prepared notes and schedules to the balance sheet. The closing date of the balance sheet shall not be more than 1 year from the date of the application. The balance sheet shall include all of the following:
 - a. Total assets and total liabilities,
 - b. Total intangible assets,
 - c. Total current assets and total current liabilities, and
 - d. Current year-end net worth.
 2. For individuals and sole proprietorships, the applicant's personal financial statement that meets all of the requirements of subsection (E)(1).
 3. For partnerships, limited liability companies and S corporations, the personal financial statement that meets the requirements of subsection (E)(1) for each owner of 20% or more of the firm.
 4. For applicants who wish to be eligible for priority ranking points under R18-12-711(G), a copy of the most current federal and state annual income tax returns that show all of the following:
 - a. Total revenues and total expenses, and
 - b. Total revenues from operation of UST facilities.
 - F. If the applicant firm is a wholly-owned subsidiary, the applicant shall provide to the Department a copy of all documents required under subsection (E) for the parent firm. The Department shall determine financial need based upon the financial statements of the parent firm.
 - G. If an application is made on behalf of a nonprofit or not-for-profit entity organized under the provisions of A.R.S. Title 10, the applicant shall submit to the Department a copy of the letter from the Corporation Commission granting nonprofit or not-for-profit status and the most recent year-end balance sheet and all prepared notes and schedules to the balance sheet. The closing date of the balance sheet shall not be more than 1 year from the date of the application. The balance sheet shall include all of the following:
 1. The information described under subsections (E)(1)(a) through (d);
 2. Current year-end and the prior year-end reserved and designated fund balances;
 3. Current year-end and the prior year-end unreserved and undesignated fund balance;
 4. If the applicant wishes to be eligible for priority ranking points under R18-12-711(G), a copy of the most recent year-end statement of revenues and expenses prepared simultaneously with the balance sheet that shows all of the information required under subsections (E)(4)(a) and (b).
 - H. If application is made on behalf of a local government, the applicant shall submit to the Department a copy of the balance sheet for the most recent completed fiscal year and all prepared notes and schedules to the balance sheet. The closing date of the balance sheet shall not be more than 1 year from the date of the application. The balance sheet shall include all of the following:
 1. Current year-end and the prior year-end reserved and designated fund balances,
 2. Current year-end and the prior year-end unreserved and undesignated fund balance, and
 3. Total current assets and total current liabilities.
 - I. The applicant shall sign, have notarized, and attach to the application a certification statement that, to the applicant's best information and belief, all information provided on the application and attachments to the application is true and complete.

Arizona Administrative Register
Notices of Final Rulemaking

R18-12-707. Work Plan

- A. A work plan for a grant for an eligible project under R18-12-702(A)(1) through (3) shall contain all of the following:
1. A site plan, drawn to scale, that includes a diagram of the facility showing the location of each UST involved in the project, the access routes to each UST involved, any obstructions to access to each UST including natural or artificial barriers, canopies, buildings, and other structures.
 2. A plan that includes specific actions to be taken during the installation or removal of any equipment or material or report of the specific material or equipment installation or removal activities.
 3. A timetable for the incremental steps and completion of the project tasks not yet commenced or completed.
 4. The specifications and certifications, as supplied provided by the manufacturer or a 3rd party, for all equipment to be installed the installation of which is the subject of the grant application, including, if it exists, the 3rd-party certification of performance standards for probability of detection and probability of false alarm for leak detection equipment in accordance with A.R.S. § 49-1003.
 5. If the eligible project includes the addition of corrosion protection to an UST installation of a cathodic protection system under R18-12-702(A)(2) or replacement of an UST under R18-12-702(A)(3), the engineering plan, if necessary, for the installation of the UST system prepared by a corrosion expert and supporting documents that demonstrate the effectiveness of the corrosion protection system under the site-specific conditions where it will be operating.
 6. The original or duplicate of a an American Institute of Architects surety bond form A311 with a penal sum in the amount of the contract, which names the Department and the applicant as dual obligees and the contractor as principal for each service provider on the eligible project, and which provides that a lawsuit under the bond may be filed within 2 years from the date on which final payment under the contract falls due. The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, Washington, D.C., as amended on June 30, 1995, and no future editions, incorporated by reference and on file with the Department of Environmental Quality and the Office of the Secretary of State.
 7. A copy of the comprehensive general liability insurance policy or a certificate of insurance for the general liability insurance policy providing coverage for each contractor who will provide services during the eligible project. The comprehensive general liability insurance policy shall have a minimum limit of liability of \$1,000,000, include coverage for pollution liability, and name the Department as a named insured for any liabilities incurred in relation to the eligible project.
 8. A copy of any mechanics' lien placed on the facility or the equipment at or to be installed at the facility in conjunction with the eligible project.
 9. A copy of each contract signed by the owner or operator concerning the eligible project.
- B. A work plan for a grant for an eligible project under R18-12-702(A)(4) shall consist of the information required under R18-12-607.01 and the requirements of subsections

(A)(6)(7) through (9), except that the contractor comprehensive general liability insurance policy is not required to include coverage for pollution liability.

- C. A work plan for a grant for an eligible project under R18-12-702(A)(5) shall comply with the requirements of subsections (A)(1) through (4), and (A)(6) through (9) and contain provisions for compliance with the standards of the American Petroleum Institute Publication 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks", amended December 1987, Supplement March 1989, Washington, D.C., and no future editions, incorporated by reference and on file with the Department and the Secretary of State.

R18-12-710. Feasibility Determination

- A. For eligible projects listed in R18-12-702(A)(2) and (3) that involve corrosion protection, the Department shall determine the feasibility of upgrading or replacing the UST. The Department shall base its feasibility determination on an internal UST inspection report a report of internal inspection of the existing UST, conducted by an Arizona licensed contractor. The inspection report shall include a certification by the contractor that the inspection was conducted and the feasibility determination made in accordance with the American Petroleum Institute publication 1615, "Safe Entry and Cleaning of Petroleum Storage Tanks", (January, 1991) and the American Petroleum Institute publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", (December 1987, Supplement March 6, 1989) 1631, "Interior Lining of Underground Storage Tanks," 2nd edition (December, 1987), and no later amendments or editions, both of which are incorporated by reference and on file with the Department and the Office of the Secretary of State.
- B. The Department shall ensure that the amount of grant monies approved for an eligible project correlates is consistent with the results of the feasibility determination. If the feasibility determination concludes that a UST can be upgraded with corrosion protection, but the application requests grant funds for replacing the UST, the Department shall not approve an amount in excess of the estimated cost of upgrading the UST. If a UST cannot be upgraded with corrosion protection, and the application requests grant funds to upgrade the UST, the Department may approve the amount of the estimated cost of replacing the UST.

R18-12-712. Criteria for Determining Priority Ranking Points for Applicants That Are Local Governments

- A. The Department shall allocate priority ranking points to a grant application of an owner or operator that is a local government in accordance with this Section. The maximum number of priority ranking points is 100, consisting of the points allocated in accordance with subsections (B) and (C).
- ~~1-B.~~ The Department shall allocate a maximum of 50 priority points for financial need as follows:
- a. A maximum of 25 priority ranking points shall be allocated based on the ratio, expressed as a percentage, of the grant request divided by total unreserved and undesignated fund balance. If the total unreserved or undesignated fund balance is negative, 25 priority ranking points shall be allocated. If the total unreserved or undesignated fund balance is positive, priority ranking points shall be allocated as follows:
- | PERCENTAGE | POINTS |
|---------------------------------|-----------|
| 20% or more | 25 Points |
| 16% up to but not including 20% | 20 Points |

Notices of Final Rulemaking

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|---------------------------------|-----------|
| 12% up to but not including 16% | 15 Points |
| 8% up to but not including 12% | 10 Points |
| 4% up to but not including 8% | 5 Points |
| Less than 4% | 0 Points |

- b2. A maximum of 25 priority ranking points shall be allocated based on the ratio, expressed as a percentage, of total current assets divided by total current liabilities. Current assets and current liabilities shall be determined from the balance sheet submitted in accordance with R18-12-706(H). Priority ranking points shall be allocated in accordance with R18-12-711(B)(3)(b).

2C. Additional priority ranking points shall be allocated in accordance with R18-12-711(C) through (F).

R18-12-714. Grant Issuance; Notification; Payment

- A. ~~Within Not later than 90 days following after the end of the submission period or, if applicable, the resubmission period,~~ the Department shall notify each applicant in writing of the denial or approval of a grant issuance. The determination of denial or approval shall be made in accordance with R18-12-713. A notice of grant approval shall contain all of the following:
1. A statement of the original amount of the applicant's grant request,
 2. An explanation of all reductions or adjustments that reduce or change the original grant request amount and the reason for each change,
 3. A statement of the amount of the grant issue, and
 4. The provisions of subsections (B) through (D).
- B. The Department shall not make any grant payment to the applicant or a person providing services or equipment to the applicant ~~for the purpose of completing the approved eligible project until the Department receives all of the following:~~
1. ~~The documents required under R18-12-707(A)(6) through (9). Proof of surety bond, general liability insurance, mechanic's lien and contract if required under R18-12-707. The grant applicant may submit these documents to the Department before or after commencement or completion of the work that is the subject of the grant application but shall submit these documents not later than 60 days after receiving the notice of grant issue approval, measured from the date of the certified mail return receipt.~~
 2. ~~Original invoices Invoices~~ for work performed or equipment installed in conjunction with the eligible project. If the work performed is an eligible project under R18-12-702(A)(1), (2), (3), or (5), then Each each invoice shall

reference the work performed or the equipment installed to the specific item or task in the work plan; If the work performed is an eligible project under R18-12-702(A)(4), then the applicant shall submit a copy of the direct payment or reimbursement determinations received pursuant to R18-12-609(A) in addition to the invoices for that work.

3. For work performed that is not an eligible project under R18-12-702(A)(4), A written statement, signed by the applicant and the person acting as general contractor on the eligible project, which certifies that all work, equipment, or materials itemized on each invoice have been performed, used, or installed in accordance with the ~~work plan approved by the Department this Chapter.~~ The statement shall contain, for each invoice itemized, the invoice number and the total amount of the invoice. The signatures appearing on the certification shall be notarized.
 4. An agreement signed by the applicant and the person serving as general contractor on the approved eligible project, which designates the name to be shown as payee on all warrants issued in payment for work and equipment on the approved project.
- C. ~~The Department shall not make total payments in excess of the amount in the written, detailed, firm, fixed cost estimates that exceed the grant amount approved by the Department in accordance with this Article, or that exceed the amount actually incurred to complete the eligible project, whichever is less. The Department shall not make payments to cover the cost of work that is not an eligible project under R18-12-702 unless the cost is for professional services directly related to the preparation of the grant application that are approved by the Department.~~
- D. If all of the requirements of subsection (B) are met, and subject to the provisions of subsection (C), the Department shall issue a warrant for the amount of the submitted invoice(s). If an applicant is notified of a grant issuance but fails to meet the requirements of subsection (B)(1) ~~within 60 days of not later than 60 days after receiving the notice of grant issue measured from the date of the certified mail return receipt,~~ then the Department shall inform the applicant in writing that the grant issue has been forfeited by the applicant. The Department shall return a forfeited grant issue to the grant fund.